BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BANKAMERICA AGRICULTURAL CREDIT)
CORPORATION)

Appearances:

For Appellant: George Koster, Attorney at Law

For Respondent: Harrison Harkins, Assistant Franchise Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in denying the application of Bankamerica Agricultural Credit Corporation for a refund of taxes for the taxable year ended December 31, 1937, in the amount of $3,992.97.

The Appellant is a domestic corporation engaged in the business of loaning money on the security of livestock in the States of California, Nevada, Oregon and Arizona. It also engages in extensive operations in the raising and selling of livestock. It was formed in 1928 by the interests which at that time controlled the Bank of Italy, and during the taxable year in question was a subsidiary of Transamerica Corporation. The latter corporation, prior to June, 1937, also owned about 99 per cent of the common stock of the Bank of America, N. T. & S. A., the successor to the Bank of Italy, and since said date has owned from 30 to 48 per cent of such stock. Appellant does not accept deposits, but it appears that a substantial number of loans are discounted by it with Federal Intermediate Credit Banks and with the Bank of America.

The tax here in controversy was assessed by reason of the fact that the Commissioner classified the Appellant as a financial corporation, and therefore computed its tax at the rate of eight per cent, subject to an offset for personal property taxes paid by it, in accordance with Sections 4 and 4a of the Act, rather than the 4 per cent rate applicable to ordinary business corporations.

In Appeal of Music Industries Acceptance Corporation, November 9, 1936, this Board made the following analysis of the term "financial corporation," as used in the Act:

> "It seems clear in view of the separate treatment of financial corporations in the Bank and Corporation Franchise Tax Act that the term 'financial corporations' is used therein in the same manner as in Section

> "5219 of the Revised Statutes of the United States, relating to state taxation of national banks and prohibiting the taxation of such banks at a rate higher than that assessed upon other financial corporations. Neither Section 5219 nor the Bank and Corporation Franchise Tax Act defines the term 'financial corporations.' The Corporation and the Commissioner, however, agree that the correct definition of the term is to be found in the decisions interpreting the phrase 'other moneyed capital' in Section 5219 and that the Corporation is properly to be regarded as a financial corporation only if its capital was employed during the year ended December 31, 1934, in such a way as to bring it into substantial competition with the business of national banks. Mercantile National Bank v. New York, 121 U. S. 138; First National Bank of Guthrie Center v. Anderson, 269 U. S. 341; First National Bank of Hartford v. Hartford, 273 U. S. 548; Minnesota v. First National Bank of St. Paul, 273 U. S. 561 . . ."

This view was recently adopted by the First District Court of Appeal of this State in The Morris Plan Company of San Francisco v. Johnson, 37 Cal, App. (2d) 621.

The Appellant and the Commissioner appear to be in agreement with the above view but differ on the question of whether the Appellant may be regarded as being in substantial competition with national banks. Each of the following circumstances, considered independently of the others, is said to require the conclusion that such competition does not exist: (1) That the Appellant does not accept deposits or otherwise engage in the general banking business; (2) that one of its two principal business operations--that of buying, raising and selling cattle --is distinct from and noncompetitive with the business of national banks; and (3) that the other of its two principal operations--that of making livestock loans--is not in substantial competition with the business of national banks because the loans are principally of a type which are not made by national banks,

In view of the decisions of the United States Supreme Court in First National Bank of Guthrie Center v. Anderson, 269 U. S. 341; First National Bank of Hartford v. Hartford, 273 U. S. 548, and Minnesota v. First National Bank of St, Paul, 273 U, S. 561, we feel compelled to conclude that the first point advanced by the Appellant is without merit. In each of these cases bank taxes were held invalid on the ground that "other moneyed capital, even though not held by persons or firms engaged in a banking business, was loaned in such a manner as to compete with national banks. In the Anderson case the Court stated;

> "The purpose of the restriction is to render it impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private

> "banking or engaged in operations and investments normally common to the business of banking . . .
>
> "The term 'other moneyed capital,' in the restriction, is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks.
>
> "Moneyed capital is brought into such competition where it is invested in shares of state banks or in private banking, and also where it is employed, substantially as in the loan and investment features of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds or other securities with a view to sale or repayment and reinvestment,"

In the Hartford case the Court expressly recognized (273 U. S. at 555) that the capital it held to be in competition with national banks was owned by individuals and firms who did not receive deposits, and it went on to state, at page $57:

> "Competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of Section 5219, even though the competition be with some but not all phases of the business of national banks."

In the light of these authorities, Appellant's second point is likewise untenable, since competition is none the less serious by reason of the fact that the competing firm also engagesin noncompetitive activities. The decisive issue in the case, therefore, appears to be whether Appellant's loans are made under such conditions as to place Appellant in substantial competition with the loaning activities of national banks.

In seeking to establish that its loan activities do not compete with those of national banks the Appellant stresses the fact that commercial banks are not able adequately to supply all the credit needs of cattlemen (See Benner, The Federal Intermediate Credit System, p. 221). It has submitted evidence that about 50 per cent of the loans made by it *are* loans which had first been rejected by a national bank. It has also submitted the opinion of its vice president to the effect that at least 75 per cent of its loans in force during 1936 and 1937 "were loans which a national bank would not make because of low interest rate, long maturity term or inadequacy of collateral security, and that the remainder of the loans are of a nature which national banks might have made although they would not generally be desirable loans for national banks because of low interest yield and expensive servicing,"

The evidence that about 50 per cent of the loans made by Appellant represented applications which had first been rejected by a national bank cannot be considered material. For all that

appears in the record, the national bank referred to was the Bank of America. In view of the affiliation between this bank and Appellant its rejection of applications for livestock loans does not indicate that such loans are not suitable for national banks. The opinion evidence just referred to is likewise not persuasive. Other evidence submitted by Appellant (See Exhibit C, Appellant's brief) indicates that its business is by no means restricted to long term loans but that it actively solicits loans for periods of one year or iess at interest rates of 4½ and 5 per cent per annum. The fact that the interest rate and the collateral required are in some cases more favorable to the borrower than the terms demanded by banks does not, in our opinion, indicate a lack of competition. On the contrary, such a circumstance would seem to intensify rather than to diminish the effect of Appellant's activities upon national banks.

The Commissioner has submitted evidence to the effect that on December 31,1934, commercial banks in California held loans aggregating $8,554,000 secured only by livestock and loans aggregating $7,639,000 secured partially by livestock (See Wall, Agricultural Loans of Commercial Banks published by U. S. Dept. of Agriculture, p.30); that two national banks located in California, the Citizens National Trust & Savings Bank and the Security-First National Bank, both of Los Angeles, have for many years made loans on livestock collateral for periods varying from 30 days to one year and at interest rates of from 4 to 7 percent per annum, and that the aggregate of such loans by each of these two banks outstanding in May and June 1940 was approximately $1,400,000 and $3,000,000 respectively,

On this state of the record we believe that the Appellant has failed to establish that its lending activities are not in substantial competition with those of national banks. Even though commercial banks do not adequately serve all of the credit requirements of the livestock industry and there are certain types of loans made by Appellant and similar institutions that are not ordinarily made by commercial banks, the essential facts remain that persons possessing satisfactory livestock collateral can borrow money from Appellant on terms comparable with those offered by national banks, that commercial banks in California, including national banks, have made loans, aggregating substantial amounts, on livestock collateral, and that Appellant has actively solicited loans of the same type.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in denying the claim of Bankamerica Agricultural Credit Corporation for a refund of taxes in the amount of $3,992.97 paid by said corporation for the year ended December 31, 1937, based upon the income of said corporation for the year ended December 31,1936, be and the same

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is hereby sustained.

Done at Sacramento, California, this 7th day of July, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary